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8 September 2003

Ms. Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC

RE: WT Docket No. 03-128
Reply Comments Regarding the Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Process

Dear Ms. Dortch,

I am providing these reply comments in the above-referenced proceeding pursuant to the instructions in the "Notice of Proposed Rulemaking" (NPRM) issued by the Commission 9 June 2003.[1] The Federal Communications Commission (FCC) issued the NPRM and attachments in its effort to further develop rules for (and streamline) its licensees' compliance with Section 106 of the National Historic Preservation Act (NHPA).

Parties writing on behalf of the telecommunications industry and historic preservation interests have provided the FCC with substantive comments in the above-captioned proceeding. What is clear from the many comments filed is that there is a wide gulf between the expectations of those in the telecommunications industry and the requirements imposed on the FCC by the National Historic Preservation Act. Industry wants streamlined reviews and cookie cutter templates for addressing complex issues; historic preservation interests want to ensure that poorly conceived tower and antenna siting do not further diminish the nation's heritage. American Indians want to have a place at the consultation table in tower siting and have expressed grave concerns over the thousands of towers built without compliance with Section 106 that impair their abilities to interact with their sacred places.

In my comments on the proposed Programmatic Agreement submitted to the FCC 8 August 2003 I wrote that the draft Nationwide Programmatic Agreement will not achieve the FCC's goals towards improving its (and its licensees') compliance with Section 106 of the National Historic Preservation Act. Many of the comments received by the FCC from historic preservation interests and from Native Americans reinforce these observations. In my reply comments I wish to address two areas raised both by industry and by preservation interests in comments provided to the FCC on the proposed

[1] FCC 03-125, "In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Process."

Programmatic Agreement. These areas involve the purported costs to industry in its efforts to comply with Section 106 and the proposal to exclude existing communications facilities from Section 106 review.

Compliance costs too much and takes too much time

The telecommunications industry uniformly supports excluding certain classes of FCC undertakings from Section 106 review. According to comments submitted by the Cellular Telecommunications and Internet Association, "Exclusions are crucial and effective streamlining measures."[2] American Tower Corporation wrote that the proposed Programmatic Agreement can "be worthy of the effort only if it streamlines the existing Section 106 process as set forth in the ACHP's rules."[3]Tower builders and carriers strive to find "more efficient ways" to increase service footprints and enhance existing networks.[4] In its opinion, PCIA would have all parties believe that the FCC's goals to streamline Section 106 compliance in ways that "provide the same level of protection to historic properties as the ACHP rules, while also employing greater flexibility and incurring less cost and delay."[5]

Compliance with Section 106 by FCC licensees cost so much and takes so much time to complete not because the rules are different for carriers and tower builders or because they are too onerous. Rather, there are exorbitant costs and time delays because the telecommunications and broadcast industries historically has used, and continues to use, environmental professionals who are not qualified to identify historic properties or render assessments of effects to historic properties. This fact was underscored by comments provided to the FCC by the Georgia SHPO and others.[6]

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[2] "In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Docket 03-128," *Comments of the Cellular Telecommunications & Internet Association* (8 August 2003), Andrea D. Williams and Michael F. Alschul, 33.

[3] "In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Docket 03-128," *Comments of American Tower Corporation* (8 August 2003), H. Anthony Lehv, John F. Clark, and Zachary Zehner, 4.

[4] "In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Docket 03-128," *Comments of Nextel Communications, Inc.* (8 August 2003), Laura H. Phillips, Laura S. Gallagher, and James B. Goldstein, 2.

[5] "In the Matter of Nationwide Programmatic Agreement Regarding the Section 106 National Historic Preservation Act Review Process, Docket 03-128," *Comments of PCIA – The Wireless Infrastructure Association* (8 August 2003), Jay Kitchen, Julie Coons, Connie Durcsak, John F. Clark, Zachary Zehner, and Keith R. Murphy, 10.

[6] "Comments on FCC Docket No. 03-128," Submitted by Richard Cloues, Deputy State Historic Preservation Officer, Georgia, 8 August 2003; "Memorandum: FCC Docket No. 03-128," Knox Mellon, California State Historic Preservation Officer, 8 August 2003; "Docket No. 03-128 – Proposed Programmatic Agreement," Earl Shettleworth, Maine State Historic Preservation Officer, 7 August 2003.

Despite industry's "commitment" to improving its Section 106 compliance track record – PCIA wrote in its comments to the FCC: "No stakeholder in the streamlining process has invested more in this programmatic agreement, is more sympathetic to its goals …" – there is a widespread disconnect between industry's motions and comments on paper and before the FCC and their actions in communities throughout the United States. Although there are significant differences in the due diligence paid to compliance with Section 106 by individual FCC licensed entities, there are uniform business practices that reinforce industry's use of improperly qualified professionals. These differences stem mainly from a lack of guidance from the FCC and the Commission's failure to enforce its rules.[7]

Much of my historic preservation consulting practice involves work for FCC licensees. I have conducted projects spanning the breadth of the continental US for FCC licensees who have hired me to redo Section 106 surveys and consultations because their previous environmental consultants proved inept or improperly qualified. Despite my repeated admonitions to my clients to use qualified historic preservation consultants, many prefer to adhere to a risk-benefit business model that depends on minimal public participation and cursory reviews by SHPO staffs. Basically, the times they don't get caught doing substandard compliance work outnumber the times they do, therefore it's "cheaper" to use unqualified professionals.

There also are many cases where FCC licensees have made good faith efforts to identify historic properties and consult with SHPOs using cultural resource management firms. Because many in the telecommunications industry don't understand that an archaeologist's skills differ from an architectural historian's or historians, many see no problem with hiring an archaeologist to take care of their Section 106 compliance. This practice has resulted in costly delays to FCC licensees, including the endangerment of a proposed wireless infrastructure project covering an entire county in the Eastern US.

The claims by telecommunications company attorneys and trade organizations that compliance with Section 106 under the Advisory Council on Historic Preservation's rules are disingenuous and do not withstand close scrutiny. Rather than provide industry with additional latitude in compliance with Section 106 of the National Historic Preservation Act, the FCC needs to step up its enforcement of past efforts to circumvent compliance and provide its licensees with clear and concise guidance on how to comply with Section 106.

Exclusion of Existing Communications Facilities from Section 106 Review

In my comments of 8 August 2003 I wrote that the portion of the proposed Programmatic Agreement – Section III(2) – excluding from Section 106 review so-called "replacement towers" would endanger a significant segment of the nation's industrial history, i.e., historic communications facilities eligible for listing in the National Register of Historic Places. Since providing those comments, the Society for Industrial Archeology, an international organization of historic preservation professionals and the interested public, has published an article I wrote on how the FCC's policies already endanger

[7] United States. Federal Communications Commission, *Code of Federal Regulations*. "Procedures Implementing the National Environmental Policy Act of 1969," 47 CFR Subpart I.

historic communications facilities and how if enacted the proposed Programmatic Agreement will exacerbate the threats to these and other industrial historic properties.[8] In executing the 2001 Nationwide Programmatic Agreement for the Collocation of Wireless Antennas, neither the FCC nor the other signatories took into account this class of historic properties. This is a fatal flaw that at a minimum should have been addressed in the present draft Programmatic Agreement and it is one factor that undermines the credibility and continued viability of the 2001 Collocation Programmatic Agreement.

As a professional serving the telecommunications and broadcast industries *and* parties (citizens and historic sites) affected by poorly conceived tower and antenna projects I have had unparalleled opportunities to work on both sides of the issues. Execution of the Programmatic Agreement presently under consideration would be detrimental to industry *and* to historic preservation interests. Thank you for providing me with this opportunity to comment in this proceeding.

Sincerely,

David S. Rotenstein, Ph.D.

[8] The Society for Industrial Archeology article is attached to these comments at "Exhibit A."

Exhibit A:

Article from the Summer 2003 Society for Industrial Archeology Newsletter

EXHIBIT A

SOCIETY FOR INDUSTRIAL ARCHEOLOGY
NEWSLETTER

Volume 32 Summer 2003 Number 3

RADIO TOWERS

New Federal Policies Threaten the Legacy of America's Communications Industry

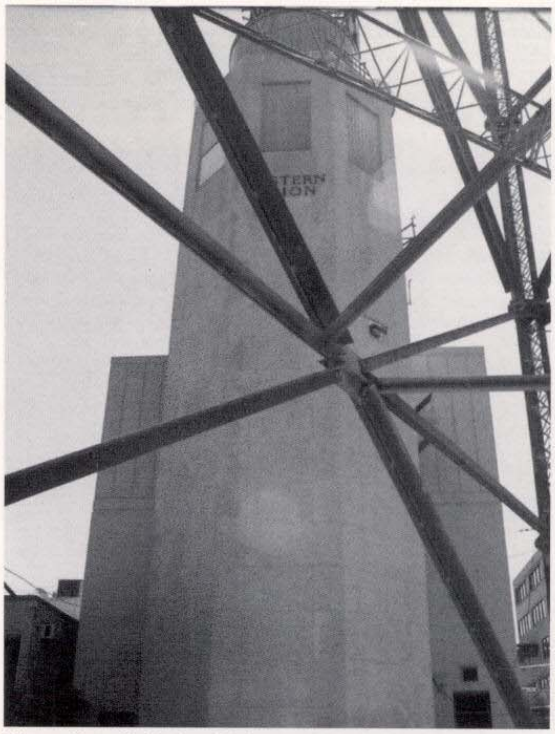
Communications facilities are a significant part of American industrial history. The first aerials to carry wireless signals began appearing at the turn of the 20th century. The proliferation of broadcasting stations had become so great that Congress sought to regulate them by passage of the Radio Act of 1927. A decade later, the new Federal Communications Commission (FCC) began a program of standardized tower lighting and paint schemes to reduce the hazards to another nascent industry—aviation. By 1940, there were more than 1,000 communications towers in the U.S., with heights from 150 ft. to 900 ft. Some of the towers standing in 1940 remain in service today and represent the important contributions of communications technology—radio, television, and radar—to American society and culture. But, recent policy decisions by the FCC make it more difficult to identify historic towers and advocate for their preservation.

The stations of the former Western Union New York-Washington-Pittsburgh Radio Relay Triangle (WURRT) comprise one such historic property. Another is the nation's first FM radio transmission tower, constructed in 1938 by radio pioneer Edwin H. Armstrong in Alpine, NJ. Sites such as the Chollas Heights Naval Radio Transmitting Facility in San Diego are among the growing number of communications facilities documented by the Historic American Engineering Record.

The WURRT may serve as an example of how the FCC's policy changes endanger historic communications facilities. Between 1945 and 1947, Western Union (WU) developed 25 stations in this system with terminals located in New York City, Washington, and Pittsburgh and relay towers constructed at regular intervals between the terminal stations. The experimental system used radio frequencies that previously had been used by the military to beam telegraph signals between radar stations. Unattended stations placed at regular intervals facilitated a line-of-sight radio relay that allowed WU to refine the radio beam telegraphy process to maintain constant signal strength. The relay stations were steel-truss (lattice) forestry observation towers outfitted to support a cabin housing antennas and other equipment.

For its Washington, D.C., terminal, known as the Tenley Site, WU bought property on 41st Street NW and hired Washington architect Leon Chatelain Jr. to design a 90-ft. tower on one of the highest elevations in the city. Chatelain designed an octagonal, brick tower, faced with limestone and capped by a turret to house the antennas. The tower's decoration is minimal. Slight curves and tapering along the parapet create an entasis (a slight convexity) effect. The only ornamentation is the "Western Union" corporate name in 13-in.-high bronze letters. The tower and its equipment wing were modified several times. In 1963, WU constructed a one-story, reinforced-concrete addition on which it built a four-legged lattice tower to mount additional microwave antennas. The added tower rises 165 ft. above the addition and two microwave reflector horn antennas cap it, along with an observation platform.

(continued on page 2)



David S. Rotenstein photos

Western Union Tenley Site, Washington, D.C., built in 1945-47, is one of the historic radio towers threatened by recent FCC decisions.

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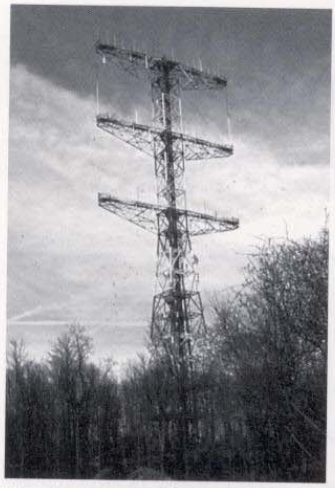
RADIO TOWERS (continued from page 1)

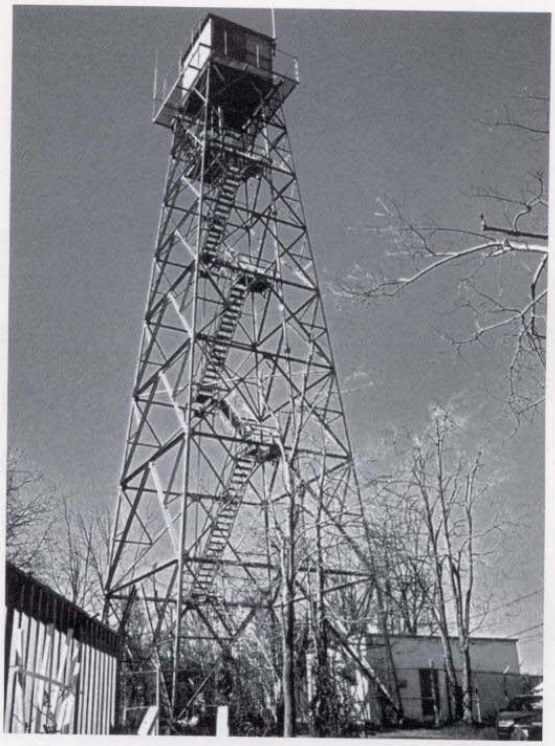


The Armstrong FM Tower, Alpine, NJ, built in 1938, is the first FM radio transmission tower in the U.S.

WU sold the Tenley Site in 1996 to Micronet, which in turn sold it to American Tower Corp. Since American Tower acquired the property, it has razed at least one building and started construction of a 756-ft. tall broadcast tower immediately in front of the historic WU tower. The FCC thus far has not responded to complaints that American Tower did not comply with the Section 106 review process for historic properties. In June 2003 the D.C. Preservation League named the Tenley Site to its "Watch List" of endangered sites.

Section 106 of the National Historic Preservation Act requires federal agencies and entities issued federal licenses, permits, or funds, to take into account the effects of undertakings (such as the construction of towers) on historic properties. The regulation gives preservationists an opportunity to monitor and influence the outcome of federal actions that may impact historic sites. Recent changes in FCC policies regarding Section 106 compliance are threatening not only historic communications facilities, but also other historic industrial sites that may be near them.

In March 2001, the FCC executed a policy that was intended to streamline compliance with Section 106. The programmatic agreement excluded from review the placement of new antennas on existing towers, thus opening the way for historic communication facilities to be altered, such as the WU site. The agreement was executed without consideration of the possibility that existing communications facilities (e.g., towers) may be historic.



Western Union Little Savage Relay Station, Garrett County, Maryland, was one of 21 relay towers in the New York-Washington-Pittsburgh Relay Triangle.

Now, the FCC is seeking public comments on a draft programmatic agreement that will exclude from review those new towers proposed to replace existing towers. It is also proposing to exclude from review the construction of new towers less than 400 ft. high on a property that is currently in use solely for industrial, commercial, or government-office purposes where no structure 45 years or older is within 200 ft. of the proposed facility. Also exempted would be new towers within 200 ft. of interstate highways and railways in active use for passenger trains if the facilities are not listed on the National Register with their settings specifically identified as integral to their significance. Most railroads on the National Register do not fulfill this provision since the nominations are often many years, if not decades, old, and this possibility was never considered.

The FCC must make an effort to ensure that federal undertakings do not adversely affect the significant properties that contribute to the history of the communications and transportation industries. Any new programmatic agreement for FCC undertakings should take into account the fact that radio broadcast, radar, microwave, and television facilities may be historic properties subject to consideration in the Section 106 process. The exclusion of these important engineering sites and other industrial sites from the Section 106 process could have long-lasting consequences on the artifacts and landscapes of our industrial heritage.

David S. Rotenstein

The *SIA Newsletter* is published quarterly by the Society for Industrial Archeology. It is sent to SIA members, who also receive the Society's journal, *IA*, published biannually. The SIA through its publications, conferences, tours, and projects encourages the study, interpretation, and preservation of historically significant industrial sites, structures, artifacts, and technology. By providing a forum for the discussion and exchange of information, the Society advances an awareness and appreciation of the value of preserving our industrial heritage. Annual membership: individual $35; couple $40; full-time student $20; institutional $50; contributing $75; sustaining $125; corporate $500. For members outside of North America, add $10 surface-mailing fee. Send check or money order payable in U.S. funds to the Society for Industrial Archeology to SIA-HQ, Dept. of Social Sciences, Michigan Technological University, 1400 Townsend Drive, Houghton, MI 49931-1295; (906) 487-1889; *e-mail: SIA@mtu.edu*; Web site: *www.sia-web.org*.

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The *SIA Newsletter* welcomes material and correspondence from members, especially in the form of copy already digested and written! The usefulness and timeliness of the newsletter depends on you, the reader, as an important source of information and opinion.

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